

APPEAL NO. 032669
FILED NOVEMBER 26, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 16, 2003. The hearing officer resolved the disputed issues by deciding: (1) that the appellant (claimant) did not sustain a compensable injury; (2) that because the claimant did not sustain a compensable injury, she did not have disability; (3) that the respondent (self-insured) specifically contested liability on the issue of timely reporting; and (4) that the self-insured is relieved of liability because of the claimant's failure to timely notify her employer of the claimed injury. The claimant appealed, disputing the adverse determinations. The appeal file does not contain a response from the self-insured.

DECISION

Affirmed.

SPECIFICITY OF DISPUTE

It was undisputed that the self-insured timely disputed the claim by filing a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). At issue was whether the language contained in the TWCC-21 was sufficient to raise the defense of whether the claimant timely notified her employer of the claimed injury. The self-insured argues that its TWCC-21 was sufficient to meet the requirements of Section 409.021 since the Appeals Panel has held that no "magic words" are required. It is well settled that "magic words are not necessary to contest the compensability" under Section 409.022. Texas Workers' Compensation Commission Appeal No. 941755, decided February 13, 1995 (quoting Texas Workers' Compensation Commission Appeal No. 93326, decided June 10, 1993). Rather we "look to a fair reading of the reasoning listed to determine if the [contest] is sufficient." *Id.* In the instant case, the TWCC-21 in part included the following contentions: the claimant applied for three weeks of sick leave from the sick leave bank on March 14, 2001, and did not indicate at that time that it was related to any on the job injury; that the claimant initially filed for medical benefits under her group health insurance and did not report the injury as workers' compensation claim; and that the claimant did not file this as a workers' compensation injury with her employer until April 7, 2003, almost two months after the alleged injury. The hearing officer's view that the language in the TWCC-21 adequately and specifically disputed the timely reporting of an injury by the claimant to the employer is not, in our judgment, against the great weight of the evidence.

TIMELY REPORTING

Under Section 409.002, failure to notify an employer of an injury as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of

liability for the injury, unless the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employer's injury. The hearing officer did not err in determining that the claimant did not timely report her claimed injury to the self-insured. The claimant had the burden to prove that she timely reported her injury to her employer. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). Conflicting evidence was presented on this issue. The hearing officer resolved the conflicts in the evidence and determined that the self-insured is relieved of liability because the claimant failed to timely report the injury to the self-insured. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

COMPENSABLE INJURY AND DISABILITY

The compensability and disability issues in this case involved factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). He resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's injury and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Cain, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge